



DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF REVENUE SERVICES, INCOME/ESTATE TAX DIVISION

Rule No. 807 (18-125 CMR 807)

NET OPERATING LOSS ADD-BACK MODIFICATION

SUMMARY: This rule provides guidance to individual and corporate taxpayers in determining the amounts, if any, of net operating loss (“NOL”) add-back modifications. Specifically, this rule interprets 36 M.R.S.A. § 5122(1)(D), (E) and (H) relating to individual taxpayers, and 36 M.R.S.A. § 5200-A(1)(B), (C) and (H) relating to corporations.

.01 Individuals

A. Net Operating Loss Carryback

In determining Maine Adjusted Gross Income for an individual, Federal Adjusted Gross Income is modified by the addition of the amount of any NOL in the taxable year that has been carried back to previous taxable years.

Example #1: 36 M.R.S.A. § 5122(1)(D) NOL Adjustment

An individual taxpayer has a \$100,000 NOL for tax year 1999. The taxpayer carries the NOL back to the two previous years.

| | NOL Year | Carryback Years | |
|--|-------------|-----------------|-----------|
| | 1999 | 1998 | 1997 |
| Federal Adjusted Gross Income (FAGI) | (\$100,000) | \$50,000 | \$70,000 |
| NOL Carryback | | (30,000) | (70,000) |
| Amended FAGI | | 20,000 | ----0---- |
| Maine Modifications: | | | |
| Income from obligations of other states | 50,000 | ----0---- | ----0---- |
| NOL Carryback Adjustment pursuant to §5122(1)(D) | 100,000 | ----0---- | ----0---- |
| Maine Adjusted Gross Income (MAGI) | \$50,000 | \$20,000 | ----0---- |

B. Net Operating Loss Carryforward

In determining Maine Adjusted Gross Income for an individual, Federal Adjusted Gross Income is modified by the addition of any NOL deduction claimed for the taxable year that has previously been used to offset Maine addition modifications.

Example #2: 36 M.R.S.A. § 5122(1)(E)

An individual taxpayer has a net operating loss for the 1998 taxable year and elects to carry the NOL forward to 1999.

| | Carryforward Year | NOL Year |
|---|-------------------|-------------|
| | 1999 | 1998 |
| Federal Adjusted Gross Income (FAGI) | \$200,000 | (\$100,000) |
| NOL carryforward pursuant to IRC §172 | (100,000) | |
| FAGI after NOL deduction | \$100,000 | |
| Maine Modifications: | | |
| Income from obligations of other states | 40,000 | 50,000 |
| NOL adjustment pursuant to § 5122(1)(E) | 50,000 | |
| Maine Adjusted Gross Income (MAGI) | \$190,000 | (\$50,000) |

C. Net Operating Loss Carryback and Carryforward

Example #3: 36 M.R.S.A. § 5122(1)(D) and (E).

For tax year 1999, an individual taxpayer realized a \$100,000 NOL. This taxpayer carries some, but not all of the NOL back to the two previous years. The taxpayer carries the remaining NOL forward to tax year 2000.

For Maine purposes, this taxpayer has non-Maine municipal bond income as follows: 2000 - \$11,000; 1999 - \$12,000; 1998 - \$9,000; 1997 - \$8,000.

The NOL deduction carried to tax years 1997 and 1998 is \$85,000. Section 5122(1)(D) requires a positive modification to tax year 1999 in that amount. The remainder of the 1999 NOL deduction (\$15,000) is carried forward to tax year 2000. Section 5122(1)(E) requires a positive modification to tax year 2000 in the amount of \$12,000 that equals the tax year 1999 offset of the modification for income from obligations of other states.

| | Carryforward Year | NOL Year | Carryback Years | |
|---|------------------------------|-----------------|------------------------|-------------|
| | 2000 | 1999 | 1998 | 1997 |
| Federal Adjusted Gross Income (FAGI) | \$40,000 | (\$100,000) | \$60,000 | \$25,000 |
| NOL deduction | (15, 000) | | (60,000) | (25,000) |
| FAGI after NOL deduction | 25,000 | | ----0---- | ----0---- |
| Maine Modifications: | | | | |
| Income from Obligations of other states | 11,000 | 12,000 | 9,000 | 8,000 |
| NOL Adjustment pursuant to §5122(1)(D) | | 85,000 | | |
| NOL Adjustment pursuant to §5122(1)(E) | 12,000 | | | |
| Maine Adjusted Gross Income (MAGI) | \$48,000 | (\$3,000) | \$9,000 | \$8,000 |

D. Net Operating Loss Carryback Prohibited for Certain Years

Any portion of a net operating loss carryback attributable to an S corporation loss must be added back to Federal Adjusted Gross Income in the carryback year(s) if:

- (1) The net operating loss was incurred during tax years beginning in 1989, 1990, 1991, and 1992; and
- (2) The net operating loss arose from an S corporation with assets of at least \$1 million.

The unutilized loss may be carried forward to future tax periods.

See ' 5122(1)(H) and ' 5122(2)(H).

.02 Corporations

A. Net Operating Loss Carryback

In computing Maine Taxable Income, Federal Taxable Income is modified by adding the amount of any NOL that has been carried back to previous taxable years.

Example #1: 36 M.R.S.A. § 5200-A(1)(B) NOL Adjustment

A corporate taxpayer realizes a NOL in tax year 1999. The taxpayer carries back all of the NOL.

| | NOL Year | Carryback Years | |
|--|-----------------|------------------------|-------------|
| | 1999 | 1998 | 1997 |
| Federal Taxable Income (FTI) | \$(100,000) | \$50,000 | \$70,000 |
| NOL Carryback | | (30,000) | (70,000) |
| Amended FTI | | 20,000 | ----0---- |
| Maine Modifications: | | | |
| State Income Taxes | 10,000 | ----0---- | ----0---- |
| NOL Carryback Adjustment pursuant to §5200-A(1)(B) | 100,000 | ----0---- | ----0---- |
| Maine Taxable Income | \$10,000 | \$20,000 | ----0---- |

B. Net Operating Loss Carryforward

In computing Maine Taxable Income, Federal Taxable Income is modified by adding the amount of any NOL that has previously been used to offset Maine addition modifications.

Example #2: 36 M.R.S.A. § 5200-A(1)(C)

A corporate taxpayer incurs a net operating loss for tax year 1998 and elects to carry forward the NOL to 1999.

| | Carryforward Year | NOL Year |
|---|--------------------------|-----------------|
| | 1999 | 1998 |
| Federal Taxable Income (FTI) | \$200,000 | (\$100,000) |
| NOL carryforward pursuant to IRC §172 | (100,000) | |
| FTI after NOL deduction | \$100,000 | |
| Maine Modifications: | | |
| State Income Tax | 20,000 | 10,000 |
| NOL adjustment pursuant to § 5200-A(1)(C) | 10,000 | |
| Maine Taxable Income (MTI) | \$130,000 | (\$90,000) |

C. Net Operating Loss Carryback and Carryforward

Example #3: 36 M.R.S.A. ' 5200-A(1)(B) and (1)(C)

For the tax year 1999, a corporate taxpayer realized a net operating loss of \$100,000. The taxpayer chooses to carry the loss back to the two previous years but cannot deduct the entire NOL in those years. The taxpayer carries the remaining NOL forward to tax year 2000.

For Maine purposes, the taxpayer has addition modifications for state income taxes as follows: 2000 - \$4,000; 1999 - \$3,000; 1998 - \$6,000; 1997 - \$3,000.

Of the \$100,000 NOL for tax year 1999, \$85,000 is carried back to tax years 1997 and 1998. Section 5200-A(1)(B) requires a positive modification to tax year 1999 for that amount. The \$15,000 remainder of the 1999 NOL deduction is carried forward to tax year 2000. Section 5200-A(1)(C) requires a \$3,000 positive modification to tax year 2000, which equals the amount used in tax year 1999 to offset the modification for state income taxes.

| | Carryforward Year | NOL Year | Carryback Years | |
|--|----------------------|-------------|--------------------|-----------|
| | 2000 | 1999 | 1998 | 1997 |
| Federal Taxable Income (FTI) | \$40,000 | (\$100,000) | \$60,000 | \$25,000 |
| NOL deduction | (15,000) | | (60,000) | (25,000) |
| FTI after NOL deduction | \$25,000 | | ----0---- | ----0---- |
| Maine Modifications: | | | | |
| State Income Taxes | 4,000 | 3,000 | 6,000 | 3,000 |
| NOL adjustment pursuant to §5200-A(1)(B) | | 85,000 | | |
| NOL adjustment pursuant to §5200-A(1)(C) | 3,000 | | | |
| Maine Taxable Income | \$32,000 | (\$12,000) | \$6,000 | \$3,000 |

D. Net Operating Loss Carryback Prohibited for Certain Years

A NOL incurred in a tax year beginning in 1989, 1990, 1991, 1992 that is carried back for federal purposes must be added back to Federal Taxable Income in the carryback year(s). The unutilized loss may be carried forward to future tax periods.

Example 4: 36 M.R.S.A. §5200-A(1)(B) and (H), and § 5200-A(2)(H).

For tax year 1990, a corporation realized a \$100,000 NOL. The taxpayer chose to carry the loss back on its federal returns. Pursuant to 36 M.R.S.A., § 5200-A(1)(H), the NOL was added back to FTI on the Maine returns. The taxpayer carried the NOL forward and was able to deduct \$85,000 of the losses prior to the Maine return filed for tax year 2000, thereby leaving \$15,000 remaining as a NOL deduction for tax year 2000.

| | Carryforward Years | | NOL Year | Carryback Years | |
|------------------------------|--------------------|----------------------------|-------------|-----------------|----------|
| | 2000 | 1991 through 1999 combined | 1990 | 1989 | 1988 |
| Federal Taxable Income (FTI) | \$45,000 | \$76,000 | (\$100,000) | \$70,000 | \$40,000 |
| NOL Carryback | | | | (60,000) | (40,000) |
| Amended FTI | | | | \$10,000 | --0-- |
| Maine Modifications: | | | | | |
| State Income Taxes | 5,000 | 9,000 | 8,000 | 10,000 | 5,000 |
| NOL adj. § 5200-A(1)(B) | | | 100,000 | | |
| NOL adj. § 5200-A(1)(H) | | | | 60,000 | 40,000 |
| NOL adj. § 5200-A(2)(H) | (15,000) | (85,000) | | | |
| Maine Taxable Income | \$35,000 | \$--0-- | \$8,000 | \$80,000 | \$45,000 |

.03 Application Date.

This rule as amended on January 1, 2001 applies to returns, including amended returns, filed on or after January 1, 2001 for any tax year.

AUTHORITY: 36 M.R.S.A. ' 112

Effective Date: February 18, 1991

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Last Amended: January 1, 2001